IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.10 OF 2004
IN
SUMMARY SUIT NO.2644 OF 2003

Mr.Dhirajlal M. Shah ..Plaintiff.

Vs.

Mr.Atulkumar R. Shah ..Defendant.

Mr.Paras Vira, Advocate for the Plaintiffs.

Mr.Jose George, Advocate for the Defendant.

CORAM: S.J.VAZIFDAR, J.
DATED: 18TH JANUARY, 2005

P.C. :

The suit is filed to recover a sum of Rs.2,40,000/- together with interest at 15% per annum. The claim is based on an amount of Rs.2,00,000/- lent and advanced by the Plaintiff to the Defendant on 30th July, 1998.

2. The learned counsel appearing on behalf of the Defendant has tendered an affidavit in reply today. I have taken the same on record and permitted the Plaintiff to proceed on the footing of denials.

3. The Defendant admittedly executed a letter dated 30.7.1998 acknowledging the receipt of a sum of

Rs.2,00,000/- from the Plaintiff and agreeing to re-pay the same on demand with interest at 15% per annum. The Defendant's case however is that in fact the amount was never advanced. It was submitted that the Plaintiff coerced the Defendant into signing the document for the purpose of showing it to money lenders and raising finances from them for the purposes of their business which was not doing well.

4. The Plaintiff has also annexed a declaration executed by the Defendant evidencing the aforesaid transaction. The Defendant has alleged that the same is a fabrication for the purpose of this order. It is not necessary to deal with the declaration.

5. This is because in any event the execution of the earlier document is admitted. The Plaintiff has then relied upon various balance confirmation letters executed by the Defendant acknowledging the amounts due from him by the Plaintiff. The last such confirmation letter is dated 15.5.2002 admitting that an amount of Rs.2,30,000/- was due and payable by the Defendant to the Plaintiff. It was however submitted that these balance confirmation letters are fabricated. In support of

this submission, it was pointed out that the letter-heads on which the alleged balance confirmation letters are executed are different from the letter-head containing the admitted writing executed by the Defendant acknowledging receipt of the loan. This however would not indicate that the letter-heads are fabricated as a person may have morethan one letter-head. It is important to note that the Plaintiff’s Advocate addressed two letters dated 12.5.2003 and 21.7.2003 (Exhibits "D1" and "D2" to the plaint). By these letters, the aforesaid facts were stated and the Defendant was called upon to re-pay the said amounts. It is important to note that the said letters specifically referred to the balance confirmation letter 15.5.2002. There is however no reply to either of these letters. It was submitted that the Defendant did not expect the Plaintiff to ultimately institute any proceedings for recovery of the said amounts as they were close friends and that the Defendant therefore did not take the matter seriously. This, is the reason, it was submitted, for the Defendant not replying to the said letters.

6. It is difficult to accept this explanation. The letter, apart from demanding the said amounts also

threatened to institute criminal proceedings against the Defendant. Surely if the Plaintiff acted in breach of the alleged confidence reposed by the Defendant in the Plaintiff, he would have replied to the aforesaid notices demanding re-payment.

7. In the circumstances, Leave to defend granted to the Defendant conditional upon the Defendant depositing in this Court a sum of Rs.2,00,000/- within 12 weeks from today.

8. In the event the Defendant deposits the aforesaid amount, the suit to stand transferred to the list of Commercial Causes. The Defendants to file their written statement within 30 days. Discovery and Inspection within four weeks thereafter.

9. In the event the Defendant fails to deposit the aforesaid amount, liberty to the Plaintiffs to apply for further orders.

10. On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of 2 years and shall renew the same thereafter for a

period of one year from time to time.

Summons for Judgment stands disposed of accordingly.

Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer.